
INCOME TAX ASSESSMENT.

No. 46 of 1928.

An Act to amend the *Income Tax Assessment Act* 1922-1927, and for other purposes.

[Assented to 28th September, 1928.]

BE it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows :—

Short title and citation.

1.—(1.) This Act may be cited as the *Income Tax Assessment Act* 1928.

(2.) The *Income Tax Assessment Act* 1922-1927* is in this Act referred to as the Principal Act.

(3.) The Principal Act, as amended by this Act, may be cited as the *Income Tax Assessment Act* 1922-1928.

Definitions.

2. Section four of the Principal Act is amended—

(a) by inserting after the definition of "Income Tax" the following definition :—

" 'Liquidator' means the person who, whether or not appointed as liquidator, is the person required by law to carry out the winding-up of a company ;" ;

* Act No. 37, 1922, as amended by No. 27, 1923; No. 51, 1924; No. 28, 1925; and by No. 32, 1927.

(b) by omitting the definition of "Partnership" and inserting in its stead the following definitions:—

" 'Partner' includes a beneficiary in a trust which is a partnership for the purposes of this Act;

'Partnership' means an association of persons carrying on business as partners or in receipt of income jointly, and includes a trust created by any person in respect of any income or income producing assets under which relatives by blood, marriage or adoption of that person are entitled to the whole or any part of that income or of the income derived from those assets, and which in the opinion of the Commissioner was created for the purpose of relieving that person from any liability which would have arisen under this Act if the trust had not been created, but does not include a company;".

3. Section twelve of the Principal Act is amended—

(a) by inserting in sub-section (4.), after the words "duties, to", the words "a Board of Review appointed under this Act or to"; and

(b) by adding at the end of sub-section (4.) the following proviso:—

" Provided that where any matter is communicated to a Board of Review in pursuance of this section and that matter consists of returns, or information derived from returns, of a taxpayer other than the taxpayer whose assessment is under review in the review in the course of which the communication is made, the members of the Board shall be subject to the same obligation as is imposed by sub-section (3.) of this section upon a person who has been an officer under this Act."

Officers to observe secrecy.

4. Section thirteen of the Principal Act is amended—

(a) by adding at the end of sub-section (1.) the following proviso:—

" Provided that in the case of a person whose income cannot be conveniently returned as for the year fixed by this Act and from whom the Commissioner has, under section thirty-two of this Act, accepted returns made up for an accounting period substituted for that year, income tax shall be levied and paid for the financial year upon the taxable income derived by that person during that accounting period."

(b) by omitting from sub-section (2.) the words "other than a company";

(c) by inserting at the end of sub-section (2.) the following proviso:—

" Provided that this sub-section shall not apply to the taxable income of a company except income in respect of which it is assessable as a trustee."

(d) by adding at the end of sub-section (8.) the following proviso:—

" Provided that in the case of any loss which is deductible under sub-section (1.) of section twenty-six of this Act the following amounts

Income tax.

shall not be taken into account under this sub-section in ascertaining the excess of allowable deductions for the year in which the loss was incurred—

- (a) where the taxpayer did not derive any assessable income in that year—the amount of the loss which is deductible under sub-section (1.) of section twenty-six of this Act ; or
- (b) where the taxpayer derived assessable income in that year—the excess of the amount of the loss which is deductible under sub-section (1.) of section twenty-six of this Act over the net assessable income as defined in that section.” ; and

(e) by omitting sub-section (9.) and inserting in its stead the following sub-section :—

“ (9.) Where a taxpayer establishes that, owing to his retirement from his occupation, or from any other cause, his taxable income has been permanently reduced to an amount which is less than two-thirds of his average taxable income, he shall be assessed, and the provisions of this section shall thereafter apply, as if he had never been a taxpayer in a previous year.

For the purposes of this sub-section, ‘ average taxable income ’ means the average taxable income by reference to which the taxpayer’s rate of tax would be calculated apart from the provisions of this sub-section, if there were excluded from his assessable income of the average years any income received by him from sources from which he does not usually receive income.”.

Exemptions.

5. Section fourteen of the Principal Act is amended—

- (a) by omitting from paragraph (l) of sub-section (1.) the word “ residing ” and inserting in its stead the word “ domiciled ” ; and
- (b) by inserting at the end of sub-section (1.) the following paragraph :—

“ (o) Income derived by a *bona fide* prospector from the sale, transfer or assignment by him of his rights to mine for gold in a particular area.

For the purpose of this paragraph ‘ *bona fide* prospector ’ means a person who has personally carried out the whole or major part of the field work of prospecting for gold in the particular area and includes any person, other than a company, who has contributed to the expenditure incurred in the work of prospecting and development in that area.”.

6. Section sixteen of the Principal Act is amended—

- (a) by omitting from the first proviso following sub-paragraph (iii) of paragraph (b) all words from and including the words “ the amount ” and inserting in their stead the

What is included as income.

words "the member or shareholder shall, where the rate of tax payable by him on income from property is less than the rate of tax paid or payable by the company, be entitled to a rebate of the additional amount of tax due to the inclusion of the dividends, bonuses, profits or shares in his assessment:"; and

- (b) by omitting from the second proviso following sub-paragraph (iii) of paragraph (b) the words "in his assessment".

7. After section sixteen A of the Principal Act the following sections are inserted:—

"16B. Where in the course of the winding-up of a company a distribution is made by the liquidator to the members or shareholders, the amount distributed shall, to the extent to which it represents income derived by the company (whether prior to or during liquidation) which would have been assessable in the hands of the members or shareholders if distributed to them by a company not in liquidation, be deemed to be assessable income of the members or shareholders derived in the year in which the distribution is made:

Income arising out of winding-up of company.

Provided that profits which have, in the opinion of the Commissioner, been properly applied to replace a loss of paid-up capital shall not be included in the income of a company for the purposes of this section.

"16C. Where a taxpayer claims that—

- (a) by reason of the manufacture, production or purchase of goods in one country and their sale in another;
- (b) by reason of successive steps of production or manufacture in different countries; or
- (c) by reason of the making of contracts in one country and their performance in another,

Claims for apportionment of income.

or for any other reason whatever, income is derived partly from sources outside Australia, the question whether any, and if so what part, of the income is derived from sources outside Australia shall be determined in accordance with the regulations, or, if there is no regulation applying to the case, shall be determined by the Commissioner."

8. Section twenty of the Principal Act is amended—

- (a) by inserting after sub-section (4.) the following sub-section:—

"(4A.) Where the whole or any part of the sum or further sum in respect of which a company has paid or is liable to pay tax under section twenty-one of this Act is distributed to its members or shareholders, a member or shareholder who is a taxpayer shall be entitled to a rebate of the amount by which his income tax is increased by reason of the inclusion in his assessable income of the amount so distributed to him.": and

Taxation of companies.

(b) by omitting sub-section (5.) and inserting in its stead the following sub-section :—

“(5.) For the purpose of ascertaining the taxable income of a company the principal business of which is life insurance there shall be excluded from the assessment the following amounts —

(a) all premiums received in respect of policies of life insurance and all considerations received in respect of annuities granted and all income derived from any source whether in or outside Australia which, apart from the provisions of this sub-section, would not be included in the assessment, and all expenditure exclusively incurred in gaining those premiums or considerations or that income ; and

(b) the part of the expenditure incurred in the general management of the business of the company (but not including any expenditure exclusively incurred in gaining or producing the income included in the assessment) which bears to that expenditure the proportion which the sum of the premiums, considerations and income mentioned in paragraph (a) of this sub-section bears to the total income of the company derived from any source whether in or outside Australia.”

Taxation of
company where
distribution not
reasonable.

9. Section twenty-one of the Principal Act is amended—

(a) by omitting sub-section (1.) and inserting in its stead the following sub-sections :—

“(1.) Where a company has not before such date prior to the making of the determination under this sub-section in respect of that company as is fixed by the Commissioner, distributed to its members or shareholders at least two-thirds of the taxable income upon which the company has been assessed for any financial year, the Commissioner shall, within six months after the date of service on the company of the notice of its ordinary assessment of that taxable income, determine whether a sum or a further sum (not exceeding the excess of two-thirds of the taxable income of the company over the amount, if any, distributed by it to its members or shareholders) could reasonably have been distributed by the company to them out of that taxable income.

“(1A.) For the purposes of the last preceding sub-section, the paid-up value of any shares distributed to the shareholders which represents a capitalization of the income upon which the company has been assessed shall, to the extent specified in clause (3) of sub-paragraph (ii) of paragraph (b) of section sixteen of this Act be deemed not to be a distribution of the income of the company.” ;

(b) by omitting from sub-section (2.) the words “to them in proportion to their interests in the paid-up capital of the company” and inserting in their stead the words “: dividend, in proportion to their interests in the paid-up capital of the company, to those shareholders who would have been entitled to receive it” ;

(c) by inserting after sub-section (2A.) the following sub-section :—
 “ (2B.) Where the Commissioner has made a determination under this section and—

- (a) the company satisfies the Commissioner that the sum or further sum which could reasonably have been distributed by the company among the members or shareholders is an amount which is less than the sum or further sum determined by the Commissioner under this section ; or
- (b) where the Commissioner is satisfied that the company has withheld information or has furnished incorrect or misleading information for the purpose of avoiding tax in an ordinary assessment or under this section,

the Commissioner may either before or after the time limited for making his determination make a determination or further determination and thereupon the provisions of sub-section (2.) of this section shall apply to the sum or further sum specified in that determination as if it were the sum or further sum mentioned in that sub-section.” ;

(d) by omitting paragraph (c) of sub-section (3.) ; and

(e) by inserting after sub-section (3.) the following sub-section :—

“ (4.) For the purposes of this section, the following sums shall be regarded as income which could reasonably have been distributed—

(a) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied, whether in pursuance of an obligation binding on the company or not—

(i) in or towards payment for its business, undertaking or property or any assets whatever of the company ;

(ii) in redemption or repayment of any share or loan capital or debt (including any premium on such share or loan capital or debt) issued or incurred in or towards payment for any such business, undertaking, property or assets, or issued or incurred for the purpose of raising money applied or to be applied in or towards payment thereof ; or

(iii) in meeting any obligation of the company in respect of the acquisition of any such business, undertaking, property or assets ; and

(b) any part of the taxable income of the company expended or applied or retained for the purpose of being expended or applied in pursuance, or in consequence, of an arrangement which, in the opinion of the Commissioner, was made for the purpose of avoidance or reduction of any liability to income tax.”

10. Section twenty-two of the Principal Act is amended by omitting paragraph (d).

**Taxation of a
mining
company.**

Deductions.

11. Section twenty-three of the Principal Act is amended—

- (a) by inserting in paragraph (i) of sub-section (1.) after the word "afforestation" the words "in Australia";
- (b) by inserting in paragraph (p) of sub-section (1.), after the word "authority" (first occurring), the words "in Australia"; and
- (c) by inserting in sub-section (2.), after the word "total" (wherever occurring), the word "assessable".

Special deduction.

12. Section twenty-four of the Principal Act is amended by inserting in sub-section (3.), after the words "means the" the words "residue of the assessable".

Deductions not to be allowed in certain cases.

13. Section twenty-five of the Principal Act is amended—

- (a) by omitting from paragraph (g) the words "proved to be such" and inserting in their stead the words "the amount of which has been included as assessable income and which are proved to be bad debts";
- (b) by inserting in paragraph (g), after the words "included those debts as", the word "assessable";
- (c) by omitting from the second proviso to paragraph (g) the words "the income was derived" (last occurring) and inserting in their stead the words "they were incurred";
- (d) by inserting in paragraph (h), after the words "production of", the word "assessable";
- (e) by inserting in paragraph (i), after the words "arriving at the", the word "taxable";
- (f) by inserting in paragraph (i), after the words "was so paid", the words "or if, after the date of such payment, the lease was owned by the taxpayer during part only of the year in which the income was derived, that part of the amount so obtained which bears the same proportion to that amount as that part of the year bears to a year"; and
- (g) by omitting from paragraph (i) all the words from "This proviso" to the end of the paragraph, and inserting in their stead the words:—

"This proviso shall not apply to any lease from the Commonwealth or a State being a perpetual lease without revaluation or a lease with a right of purchase."

14. After section twenty-five of the Principal Act the following section is inserted:—

Deductions affected in cases of sales of leases.

"25A. Where any deduction has been allowed, under the proviso to paragraph (i) of the last preceding section, in the assessment of any person and that person sells, assigns or transfers the lease in respect of which the deductions have been allowed and the proceeds of the sale, assignment or transfer are assessable as income derived from the carrying on of a business or from the carrying out of a profit-making

scheme, the deductions which would but for this section have been allowable in the assessment of those proceeds shall be reduced by the amount of the deduction or of the sum of the deductions allowed in the assessments of that person under that proviso.”.

15. Section twenty-six of the Principal Act is amended—

Deductions of
business
losses.

(a) by omitting sub-section (1.) and inserting in its stead the following sub-section :—

“(1.) Where a person makes a loss in any year in carrying on a business, the proceeds of which (if any) would be assessable, he shall be entitled to a deduction of that loss from the net assessable income (if any) derived by him in that year :

Provided that where that person has in that year derived income which for any reason is not liable to be assessed the amount deductible under this sub-section shall be—

(a) if the person is not an absentee—the amount by which the loss exceeds the income which is not so liable, after deducting from that income, in any case in which there is a business loss which is attributable to sources outside Australia, the amount of that loss ; and

(b) if the person is an absentee—the amount by which the loss exceeds the income derived from sources in Australia which is not so liable.” ;

(b) by inserting in sub-section (2.), after the word “if” (first occurring), the words “, on account of the insufficiency of net assessable income in those years,” ;

(c) by inserting after sub-section (2.) the following sub-section :—

“(2A.) Where the amount of any loss which is required under paragraph (a) or paragraph (b) of the proviso to sub-section (1.) of this section to be set off against income which is not liable to be assessed, is less than the amount of that income, the total amount to be deducted under this section from the net assessable income of the year in which that loss was incurred shall be calculated as if the proviso to sub-section (1.) of this section applied to the sum of that loss and of the loss or part of loss allowable under the last preceding sub-section, and not only to a loss incurred in the year in which the net assessable income was derived.” ;

(d) by inserting in sub-section (3.), after the words “exceeds the”, the words “net assessable” ;

(e) by inserting in sub-section (4.), after the word “from” (first occurring), the words “the net assessable” ; and

(f) by omitting sub-section (5.) and inserting in its stead the following sub-sections :—

“(5.) Where, in calculating the deduction under sub-section (1.) of this section for the purpose of ascertaining, in accordance with paragraph (a) of sub-section (1.) of section twenty-nine of this Act,

the income of a partnership, any amount of loss made by the partnership in any year is not deducted by reason of the insufficiency of net assessable income, the share of each partner in that amount shall, for all purposes of this section, be deemed to be a loss made by him in that year.

“(6.) For the purposes of this section, unless the contrary intention appears—

- (a) ‘net assessable income’ means the income by reference to which the deduction under section twenty-four of this Act would, but for the deduction allowable under this section, be calculated ;
- (b) ‘loss’ means—in the case of a business, the income of which (if any) would, in the opinion of the Commissioner, be apportionable between sources within and sources outside Australia—so much of the loss sustained as, in the opinion of the Commissioner, is attributable to sources within Australia.”.

Oversea ships.

16. Section twenty-seven of the Principal Act is amended by omitting sub-sections (1.), (2.), (3.) and (4.) and inserting in their stead the following sub-sections :—

“(1.) Where a ship belongs to or is chartered by a person whose principal place of business is out of Australia and carries passengers, live stock, mails or goods shipped in Australia, the master of that ship or the agent or other representative in Australia of that person shall, when called upon by the Commissioner by notice published in the *Gazette* or by any other notice to him, make a return of the full amount payable to the owner or charterer (whether such amount be payable in or beyond Australia) in respect of the carriage of the passengers, live stock, mails and goods.

“(2.) The master, agent or other representative shall be assessed thereon as agent for the owner or charterer and shall be liable to pay tax on seven and one-half pounds per centum of the amount so payable.

“(3.) Where no return is made under this section by the master of the ship or by the agent or other representative of the owner or charterer of the ship, the Commissioner may determine the amount payable to the owner or charterer in respect of the carriage of the passengers, live stock, mails and goods and may assess the tax payable on seven and one-half pounds per centum of that amount and the master shall be assessed thereon as agent for the owner or charterer and shall be liable to pay the tax assessed.

“(4.) Where a return is made as required by this section and an assessment in respect of that return is made on the agent or other representative and the tax is not paid as required by or under this section the master of the ship shall be liable to pay the tax so assessed.

“(4A.) Where any person is made liable to pay tax under this section the Commissioner shall give notice of assessment to that person, and that person shall forthwith pay the tax assessed.”

17. Section twenty-nine of the Principal Act is amended—

Partners.

- (a) by omitting from paragraph (a) of sub-section (1.) the word “deduction” and inserting in its stead the word “deductions”;
- (b) by inserting in paragraph (a) of sub-section (1.), after the word “twenty-four”, the words “and under sub-section (2.) of section twenty-six”; and
- (c) by omitting from sub-section (2.) the words “the partnership shall be assessed as if it were a single person without regard to their respective interests therein or to any deduction to which either of them may be entitled under this Act, and without taking into account any income derived by either of them separately or as partner with any other person” and inserting in their stead the words “and also in the case of a trust which is a partnership as defined in section four of this Act, the partnership shall be assessed as if it were a single person without regard to the interests therein of any of the partners or to any deductions to which any of them may be entitled under this Act, and without taking into account any income derived by any of them separately or as partner with any other person”.

18. Section thirty-one of the Principal Act is amended by inserting in sub-section (1.), after the word “trustee” (first occurring), the words “, other than a trustee of a trust which is a partnership as defined by section four of this Act,”.

Trustees.

19. Section thirty-two of the Principal Act is amended—

Persons to furnish returns.

- (a) by inserting in sub-section (1.), before the word “income” (second occurring), the words “total assessable”;
- (b) by inserting in paragraph (a) of sub-section (1.), after the word “total”, the word “assessable”;
- (c) by inserting in paragraph (b) of sub-section (1.), after the word “total”, the word “assessable”;
- (d) by omitting from sub-section (3.) the word “to” (first occurring) and inserting in its stead the words “for a period of twelve months ending on”; and
- (e) by adding at the end thereof the following sub-section:—

“(4.) Where the Commissioner has under the last preceding sub-section accepted from any person returns made up in respect of the accounting period any references in this Act to the year in which income is derived shall in relation to that person be deemed to be a reference to that period.”

20. Section thirty-seven of the Principal Act is amended by inserting in sub-section (3.), before the word “income”, the word “taxable”.

Alteration of assessment

Definition of
"liquidator".

21. Section fifty-nine of the Principal Act is amended by omitting sub-section (3.) thereof.

Application of
Act.

22.—(1.) The amendment effected by paragraph (a) of section four of this Act, sub-section (1.) inserted in section twenty-one of the Principal Act by paragraph (a) of section nine of this Act and the amendment effected by paragraph (e) of section nineteen of this Act shall be deemed to have commenced upon the date of the commencement of the *Income Tax Assessment Act 1922* :

Provided that the operation of the amendments and sub-section specified in this sub-section shall not affect the rights of any person under a judgment obtained by him prior to the commencement of this Act.

(2.) The amendments effected by paragraph (b) of section two of this Act, by paragraphs (b), (c) and (e) of section four of this Act, and by section six of this Act, section sixteen c inserted in the Principal Act by section seven of this Act, and the amendments effected by section eight, by paragraphs (a) and (b) of section eleven, by paragraphs (f) and (g) of section thirteen, by section fourteen, by paragraphs (a) and (c) of section fifteen, by paragraph (c) of section seventeen, and by section eighteen, of this Act shall apply to assessments for the financial year beginning on the first day of July One thousand nine hundred and twenty-eight, and all subsequent years :

Provided that, for the purposes of the application of sub-sections (2.) to (13.) inclusive of section thirteen of the Principal Act to those assessments, the amendment effected by section six of this Act shall apply to income derived after the first day of July One thousand nine hundred and twenty-three or after the commencement of any accounting period substituted for the financial year beginning on that date.

(3.) The amendments effected by paragraphs (d) and (e) of section nine of this Act shall apply in respect of all determinations to be made, after the commencement of this Act, under section twenty-one of the Principal Act, as amended by this Act.

(4.) The amendment effected by paragraph (b) of section nine of this Act shall apply to all assessments to be made after the commencement of this Act in consequence of any determinations made or to be made under section twenty-one of the Principal Act or under that section, as amended by this Act.

(5.) Section sixteen b inserted in the Principal Act by section seven of this Act shall apply in respect of companies going into liquidation at or after the commencement of this Act.